

CIVIL SERVICE COMMISSION MINUTES

February 16, 2005

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

A.Y. Casillas
Gordon Austin
Barry I. Newman
Francesca Krauel
Marc Sandstrom

Absent was: None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamarly, Executive Officer
William D. Smith, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission**

March 16, 2005

**COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
FEBRUARY 16, 2005**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
1,7,8,9,10,11			20
12,13,19			

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Sandstrom. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.**

A. Commissioner Austin: **Ricky Persky**, Agricultural Standards Inspector, appealing an Order of Suspension and Charges from the Department of Agriculture, Weights & Measures.

B. Commissioner Krauel: Donovan Jacobs, Esq., on behalf of **2004-12**, appealing an Order from the Sheriff's Department.

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision (a) of Government Code Section 54956.9) The Copley Press, Inc. v. Superior Court, Court of Appeal No. D042251; California Supreme Court No. S128603

**OPEN SESSION AGENDA
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and approved by the Commission President.

Newly appointed President, A.Y. Casillas, thanked outgoing Commissioner Marc Sandstrom for his dedication and service to the

Commission and the County of San Diego in his capacity as Commissioner, Hearing Officer and President of the Commission (2004-2005).

MINUTES

1. Approval of the Minutes of the regular meeting of February 16, 2005.

Commissioner Newman requested staff to correct the voting record on Page 6 of the Minutes, item no. 6.

Motion by Newman to approve Minutes, seconded by Krauel. Carried.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Austin: Everett Bobbitt, Esq., on behalf of, **2005-02**, appealing an Order from the Sheriff's Department.

Confirmed.

3. Commissioner Casillas: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Anastasia Gardner**, former Detention Information Assistant, appealing an Order to Terminate and Charges from the Sheriff's Department.

Confirmed.

4. Commissioner Krauel: **2005-03**, appealing an Order from the Sheriff's Department.

Confirmed.

REASSIGNMENTS

5. Commissioner Krauel: Donovan Jacobs, Esq., on behalf of **2004-12**, appealing an Order from the Sheriff's Department. Commissioner Sandstrom was originally assigned.

Confirmed.

6. Commissioner Newman: **Faten Westenfeldt**, Child Support Officer, Department of Child Support Services (DCSS), alleging religion and national origin discrimination by the DCSS. Commissioner Sandstrom was originally assigned.

Confirmed.

DISCIPLINES

Findings

7. Commissioner Austin: **Ricky Persky**, Agricultural Standards Inspector, appealing an Order of Suspension and Charges from the Department of Agriculture, Weights & Measures.

Prior to the reading of the Findings and Recommendations, Commissioner Newman recused himself from the discussion and vote on this item.

FINDINGS AND RECOMMENDATION:

Employee was charged with Cause I - Inefficiency; Cause II - Dishonesty; Cause III - Dishonesty; Cause IV - Failure of Good Behavior; Cause V - Acts incompatible with or inimical to the public service; and Cause VI - Conduct unbecoming of an employee of the County of San Diego.

Appellant is an Agricultural Standards Inspector assigned to inspecting nurseries. He was charged with the following: 1) Failing to follow his Supervisor's instructions to perform all his inspections north of Interstate 8; 2) Dishonestly denying that he performed such inspections; 3) Dishonestly alleging that he had been assigned a particular nursery inspection; and 4) Insubordinately asserting that a particular directive was a waste of time.

Appellant has a significant recent discipline record. Thus it initially appeared that the discipline might be too lenient. However, as the hearing progressed, the Department was unable to prove many of its charges. For example, while the Department directed Appellant that he was to inspect only nurseries located north of Interstate 8, it subsequently provided him with an inspection list with no such limitation and which identified nurseries south of I-8. His Supervisor testified that her oral instruction was intended to amend the list. However, the list was provided to Appellant subsequent to her instruction and was accompanied by its own handwritten instructions from her. Accordingly, it could reasonably be interpreted to replace her prior limitation. It was her duty to be clear in her instructions and she cannot hold Appellant responsible for confusion resulting from ambiguity. Similarly, many of the Department's other charges failed for want of objective evidence. On the other hand, under the circumstances, Employee should have asked for clarification.

Employee is guilty of Cause I, Inefficiency, as mitigated above. Employee is not guilty of Cause II, Dishonesty; Cause III, Insubordination; Cause IV, Failure of Good Behavior; Cause V, Acts Incompatible with and Inimical to the Public Service; and Cause VI, Conduct Unbecoming of an Employee.

It is therefore recommended that the ten workday (80 hours) suspension contained in the Order of Suspension and Charges be reduced to a three workday (24 hours) suspension; that Employee will be awarded back pay, benefits, and interest for any suspension time already served related to the Order of Suspension and Charges, minus any wages he received from outside employment and minus the three workday suspension referred to above; any pending personnel actions relating to the substantive issues raised in this matter shall be factually consistent with these findings; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Sandstrom. Carried.

AYES:	Casillas, Austin, Krauel, Sandstrom
NOES:	None
ABSTENTIONS:	Newman
ABSENT:	None

8. Commissioner Krauel: Donovan Jacobs, Esq., on behalf of **2004-12**, appealing an Order from the Sheriff's Department.

FINDINGS AND RECOMMENDATION:

The matter of the appeal of 2004-12, from a written Order of Discipline from the Sheriff's Department was presented to the Civil Service Commission. The Commission appointed Commissioner Marc Sandstrom, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. The hearing was subsequently reassigned to Commissioner Francesca Krauel. Thereafter, the matter was duly noticed and came on for hearing on January 31, 2005.

Based on the Findings and Conclusions, it is therefore recommended that Causes I and II be dismissed; that Causes III, IV, and V be sustained; that the Order of Discipline be affirmed; that the Commission read and file this report; and

that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Krauel to approve Findings and Recommendations; seconded by Newman. Carried.

SELECTION PROCESS

Complaints

9. **Ardath DeRose**, Administrative Analyst II, Probation Department, appealing the Department of Human Resources' (DHR) determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst III. (Continued from the January 19, 2005 meeting.)

RECOMMENDATION: Deny Request.

Appellant, Ms. DeRose, as well as Carlos Arauz, DHR, presented to the Commission. Mr. Arauz requested that Items 9, 10 and 11 be heard simultaneously, and the appellants agreed to this request.

After discussion amongst the Commissioners, the following motion was made:

Motion by Sandstrom to allow Ms. DeRose to be deemed eligible to take the Analyst III exam; seconded by Krauel, for discussion purposes only.

Item Nos. 9, 10 and 11 herein were discussed simultaneously.

The Commission heard from the all three Appellants, Department HR Managers, and Carlos Arauz, Director of DHR. After thoroughly weighing all sides in this matter, an amended motion was presented by Commissioner Sandstrom.

Motion by Sandstrom to allow DeRose, Ippolito and Armenta the opportunity to directly proceed with the Analyst III exam process. Seconded by Krauel. Motion failed.

AYES:	Sandstrom, Krauel
NOES:	Casillas, Austin, Newman
ABSTENTIONS:	None
ABSENT:	None

**Motion by Newman to deny request(s) for hearing;
seconded by Austin. Carried.**

**AYES: Casillas, Austin, Newman, Krauel
NOES: Sandstrom
ABSTENTIONS: None
ABSENT: None**

10. **Sharon Ippolito**, Administrative Analyst II, HHSA, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst III. (Continued from the January 19, 2005 meeting.)

RECOMMENDATION: Deny Request.

Ms. Ippolito addressed the Commission. This item was discussed in conjunction with Item Nos. 9 and 11 herein. See Item No. 9 above.

Staff Recommendation approved. Hearing Denied.

11. **Martha Armenta**, Administrative Analyst II, HHSA, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst III.

RECOMMENDATION: Deny Request.

Ms. Armenta addressed the Commission. This item was discussed in conjunction with Item Nos. 9 and 10 herein. See No. 9 above.

Staff Recommendation approved. Hearing Denied.

12. **Leticia Arellanes**, Administrative Secretary III, Department of Public Works, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst I.

RECOMMENDATION: Deny Request.

Ms. Arellanes spoke on her own behalf and Willie Cook, Deputy Director, DHR, presented for the Department and was available to answer questions the Commission might have had regarding this item.

**Motion by Krauel to deny request for a hearing;
seconded by Austin. Carried.**

13. **John Fuss**, Storekeeper II, HHSA, appealing DHR's scoring of his application for the classification of Storekeeper III.

RECOMMENDATION: Deny Request.

Mr. Fuss addressed the Commission, and after clarifying questions presented by Mr. Fuss, with the assistance of Senior Human Resource Analyst, Anne Calle, the Commission presented its motion.

**Motion by Austin to deny request for a hearing;
seconded by Newman. Carried.**

Findings

14. **Douglas Downes**, appealing DHR's removal of his name from the employment list for Deputy Sheriff-Cadet.

15. **Michael Hacking**, appealing DHR's removal of his name from the employment list for Deputy Sheriff-Detentions/Courts.

16. **Marcello Orsini**, appealing DHR's removal of his name from the employment list for Deputy Sheriff-Cadet.

RECOMMENDATION: Ratify Item Nos. 14-16. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 14-16 ratified.

OTHER MATTERS

Ratification of Medical Provider

17. Ratification of **Randall S. Hawkins, M.D.**, as an additional name to the list of medical providers to be used for fitness for duty examinations at the request of DHR.

RECOMMENDATION: Ratify.

Item No. 17 ratified.

Extension of Temporary Appointments

18. Department of Planning and Land Use

1 Geographic Information Systems Analyst Trainees
(Aaron Johnson)

RECOMMENDATION: Ratify.

Item No. 18 ratified. Commissioner Newman requested that staff provide him with the original request.

19. Discussion and possible adoption of new Rule VII hearing "lead-in" script.

A subcommittee was appointed to review the "lead-in" script for Commission hearings. Commissioners Krauel and Newman were appointed.

INFORMATION

20. Donna Clark-Richardson, SEIU Local 2028, on behalf of **Dorothy Alexander**, Records Clerk, withdrawal of appeal of an Order of Suspension and Charges from the Department of Probation. (Commissioner Austin)

21. Public Input.

ADJOURNED: 4:30 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: MARCH 16, 2005